

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

MICHAEL HALL and JAMES HALL,)	
)	
Plaintiffs,)	Case No. _____
)	
v.)	
)	Removed from:
ENSUREM II, LLC)	
and JANE DOES 1-5,)	12th Judicial District Court
)	Otero County, New Mexico
Defendants.)	No. D-1215-CV-2020-00748

NOTICE OF REMOVAL

PLEASE TAKE NOTICE that pursuant to 28 U.S.C. §§ 1331, 1441 and 1446, Defendant Ensurem II, LLC (hereinafter “Ensurem”), by its attorneys, files this Notice of Removal to remove this action from the Twelfth Judicial District Court, Otero County, New Mexico, to the United States District Court for the District of New Mexico. In support of this Notice of Removal, Ensurem states as follows:

1. Plaintiffs Michael Hall and James Hall originally commenced this action by filing a complaint against Ensurem in the Twelfth Judicial District Court, Otero County, New Mexico, captioned *Michael Hall and James Hall v. Ensurem II, LLC and Jane Does 1-5*, Case No. D-1215-CV-2020-00748, on October 15, 2020. The complaint was served on Ensurem’s registered agent on October 19, 2020. A true and correct copy of the complaint and summons is attached hereto as Exhibit A. No further proceedings before the state court have occurred.

2. For the reasons described below, this Court has jurisdiction over the state court action pursuant to 28 U.S.C. § 1331 because Plaintiffs’ complaint alleges a cause of action arising under the laws of the United States. Plaintiffs’ complaint alleges that Ensurem violated the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.* (“TCPA”), by placing calls to

Plaintiffs' cellular telephone in violation of the statute.

3. Plaintiffs' complaint seeks actual and statutory damages, as well as attorney's fees and costs.

4. The United States Supreme Court has affirmed that federal question jurisdiction exists when presented with a substantial federal question. *Grable & Sons Metal Prods., Inc. v. Darue Eng. & Mfg.*, 545 U.S. 308 (2005). Because Plaintiffs seek relief for a cause of action arising under the TCPA, a federal statute, the complaint asserts a federal question under 28 U.S.C. § 1331 and 47 U.S.C. § 227, and it is therefore removable pursuant to 28 U.S.C. § 1441.

5. The complaint also alleges violations of the New Mexico Unfair Practices Act, NMSA § 57-12-1, *et seq.* This Court has supplemental jurisdiction, pursuant to 28 U.S.C. § 1367, over this cause of action because it is based on the same operative facts alleged in the complaint with respect to Plaintiffs' TCPA claim and is so related to claims in the action within the Court's original jurisdiction that they form part of the case or controversy under Article III of the United States Constitution.

6. This Notice of Removal is timely filed pursuant to 28 U.S.C. § 1446(b) in that it is being filed within thirty (30) days after service of the complaint on Ensurem. Ensurem was served on October 19, 2020. *See* Exhibit B hereto.

7. The Twelfth Judicial District Court of Otero County is located within the federal district for the District of New Mexico. Therefore, venue for purposes of removal is proper because the United States District Court for the District of New Mexico embraces the place in which the removed action was pending. 28 U.S.C. § 1441(a).

8. Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice of Removal is being served on Plaintiffs Michael Hall and James Hall through their counsel at the addresses provided in the

complaint. Notice will also be promptly filed with the clerk of the Twelfth Judicial District Court of Otero County.

9. Ensurem files this Notice of Removal solely for the purpose of removing the state court action and does not waive, and specifically reserves, all defenses.

WHEREFORE, Defendant Ensurem II, LLC gives notice that this action is removed to the United States District Court for the District of New Mexico, and respectfully requests that no further proceedings in this matter be had in the Twelfth Judicial District Court of Otero County.

RESPECTFULLY SUBMITTED,

CAVIN & INGRAM, P.A.

By:



Stephen D. Ingram

P.O. Box 1216

Albuquerque, New Mexico 87103-1216

Telephone: (505) 243-5400

E-mail: singram@cilawnm.com

Attorneys for Defendant Ensurem II, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 16, 2020, I electronically filed the foregoing Notice of Removal with the Clerk of Court using the CM/ECF system. A copy of this document and all attachments are being served upon Plaintiffs' counsel via U.S. mail, postage prepaid, and further sent by electronic mail to the addresses below:

Sid Childress, Esq.
Childress Law
1925 Aspen Dr. #600A
Santa Fe, NM 87505
childresslaw@hotmail.com

Attorney for Plaintiffs

CAVIN & INGRAM, P.A.

By: 
Stephen D. Ingram

Attorney for Defendant Ensurem II, LLC